HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT PETITION No.9818 OF 2007

Between:

United India Insurance Company Limited,
Rep by its Regional Manager,
Regional Office, Basheerbagh, Hyderabad.

… Petitioner

AND

D.Venkayamma and another

… Respondents

:: ORDER ::

Counsel for the petitioner : Shri K.N.Mallikarjun Rao for
Shri R.Briz Mohan Singh

Dated: 01.05.2007

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Per C.V.Nagarjuna Reddy, J

This is a petition for quashing orders dated 3.1.2006 and 8.2.2007 passed by District Consumer Disputes Redressal Forum, Hyderabad (for short 'the District Forum') and Andhra Pradesh State Consumer Disputes Redresal Commission, Hyderabad (for short 'the State Commission') in C.D.No.481 of 2005 and F.A.I.A.No.1833 of 2006 and F.A.(SR) No.3845 of 2006 respectively.

A perusal of the record shows that Shri D. Venkateshwarlu (the husband of respondent No.1) had taken Group Janata Accident Insurance Policy (hereinafter described as 'the insurance policy') from the petitioner for a sum of Rs.3,00,000/-. On 16.8.2001, the insured suffered snake bite and was admitted in Jaya Hospital, Hanamkonda. He died on 20.8.2001. The postmortem certificate issued by Civil Assistant Surgeon, Narsampet, Warangal District discloses the cause of death as snake bite. After sometime, respondent No.1 submitted claim for payment of amount in terms of the insurance policy, but the same was denied by the petitioner. Application made by respondent No.1 to the Insurance Ombudsman, Hyderabad under Rule 16 of the Redressal of Public Grievances Rules, 1998, which was registered as complaint No.10 (HYD)/G.3057 was dismissed on 25.6.2004 with an observation that the two postmortem reports were contradictory and the theory of snake bite was false.

Thereafter, respondent No.1 filed a complaint under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act'), which was

registered as C.D.No.481 of 2005 for payment of amount in terms of the insurance policy. She pleaded that her husband was admitted in Jaya Hospital, Hanamkonda on 16.8.2001 with snake bite; that he died on 20-8-2001 and that as per the postmortem report conducted by Government Hospital, Narsampet, the cause of death was snake bite.

The petitioner contested the complaint by asserting that in view of dismissal of similar complaint by the Banking Ombudsman, respondent No.1 was not entitled to invoke the provisions of the Act.

The District Forum considered the rival pleadings and evidence and held that the insured had died due to snake bite and respondent No.1 is entitled to the insurance amount. Paragraph 8 of the order passed by the District Forum, which contain detailed discussion on the subject reads as under:

> "8. The complainant contended that as per the insurance policy, the complainant is entitled to insurance claim. The O.P.1 contended that the date of admission in the hospital was recorded as 16.8.2001, expired on 20.8.2001 whereas in the claim form, the date of admission in the Jaya Hospital is mentioned as 19.8.2001 and the cause of death also in P.M. certificate and other relevant certificates defers. The submission made by the O.P. is not sustainable. On perusal of Ex.A.8 itself goes to show that the date of admission of the complainant husband Venkateswarlu on 16.8.2001 was mentioned in the hospital records, whereas only in the claim form the date of admission was mentioned as 19.8.2001. as per the said letter itself goes to show that the date of admission in the hospital record is 16.8.2001, there is no dispute with regard to the death of the deceased is concerned. Ex.A.6 is the FIR given by Dhanda Nageswara Rao, brother of the deceased. As per the FIR was given by the complainant brother on 21.8.2001, on the basis of the said complaint FIR was issued by the police u/s.174 Cr.P.C. As per the FIR itself goes to show that his brother was died while he was undergoing treatment in the hospital. Ex.A.7 is the Inquest Panchanama. As per this panchanama in Column No.15, opinion of panchas discloses

that the complainant husband died due to snake bite. Exs.A.8 and A.9 are the investigations and P.M. findings. Ex.A.10 is the P.M. report. As per the P.M. report discloses that the cause of death is due to snake bite. The complainant filed documents discloses that the complainant husband was having a Janata Accident Policy Claim in the O.P.1 bank while the said accident policy covers the complainant husband died due to snake bite. The O.P. contended when the Banking Ombudsman rejected the claim of the complainant, the complainant ought to have filed an appeal, instead filed complaint before this Forum. In support of the O.P. claim, the O.P. has relied on Royal World Exima and Agencies, Guntur v. Reserve Bank of India, Hyderabad reported in 2000 (6) ALD Page 308 wherein it was held that in pursuance of Sec.35-A of Banking Regulation Act, it has got a statutory force, wherein it was held that the Ombudsman award to be accepted and implemented. The principle laid down in this case is not applicable. The O.P. contended that U/s.19 (2) of the Banking Ombudsman Scheme, 2002, the decision of the Ombudsman shall be final binding on both parties. The submission made by the O.P. is not sustainable. In support of the O.P. claim he has relied S.Jaya Prakash Narayana v. K.K.N. Kumari and others reported in 2004 (6) ALD page 560 wherein a principle laid down a person approaches the forum for Redressal of his complaints, he cannot again approach on the same complaint. The principle laid down in this case is not at all applicable. The complainant's husband died on account of the snake bite, as per the insurance policy condition the snake bite also covers insurance. As per the P.M. report issued by the Sr. Surgeon goes to show that the deceased died on account of the snake bite. The complainant is entitled to insurance claim. The O.P. contended that P.M. report and other notarized P.M. report reserved against the cause of death. The submission made by the O.P. is not sustainable. The Ombudsman is not sustainable, rejecting the claim of the complainant stating that the date of admission of the deceased in the hospital was 19.8.2001. The complainant filed P.M. certificate (Ex.A.10) and Inquest Report (Ex.A.7) discloses that the cause of death is due to snake bite. On the complaint given by the brother of the

deceased, FIR was issued and police has investigated the case stating that the cause of death is due to snake bite. The complainant's husband was covered under Janata Accident Policy issued by O.P.2 to O.P.1 Bank covering all the saving bank account holders. The P.M. examination certificate also revealed that the cause of death is due to snake bite. The O.P.2 is the insurance company is not contesting the claim of the complainant. On perusal of the orders of the Insurance Ombudsman discloses that the insurance company appointed investigating agency, priman detective agency, the investigation reports reveal that the deceased died due to respiratory and cardiac arrest and not due to snake bite. The O.P. failed to file a Priman Detective Agency report before this forum nor O.P. is contesting the claim of the complainant. The complainant has taken a specific plea in the complaint and evidence affidavit that the cause of death of the complainant is due to snake bite. The complainant filed documents discloses that the insurance is valid on the date of the death, as per the insurance policy the complainant is entitled to claim insurance amount. The complaint against O.P. is dismissed. The complainant is entitled insurance claim amount of Rs.3 lakhs against O.P.No.2 and also entitled costs of Rs.2,000/-."

The petitioner challenged the order of the District Forum by filing an appeal under Section 15 of the Act. The same was registered as F.A. (SR) No.3845 of 2006. It also filed I.A.No.1833 of 2006 for condonation of delay of 150 days in filing the appeal. By an order dated 8.2.2007, the State Commission dismissed the application for condonation of delay by observing that the applicant has failed to show sufficient cause for not filing appeal within the period of limitation. The State Commission also considered the appeal on merits and held that the order passed by the District Forum does not suffer from any legal infirmity. The relevant extracts of the order passed by the State Commission is reproduced below:

"… It is the case of the respondent/complainant that her

husband died due to snake bite and the policy issued by the petitioner/appellant Insurance Company also covers snake bite. The postmortem certificate – Ex.A.10, which was issued by the Civil Assistant Surgeon, Community Health Centre, Narsampet, Warangal District clearly shows that the deceased died on account of snake bite. The inquest panchanama also clearly discloses that the deceased died due to snake bite. It is also on record that on the complaint given by the brother of the deceased, FIR was issued and the police investigated the case and found that the cause of death of the deceased was due to snake bite. There is no dispute that the deceased was covered under Janata Accident Policy issued by the petitioner/appellant Insurance Company. The contention of the petitioner/appellant that they appointed Investigating Agency (Priman Detective Agency) to investigate into the matter and their report reveals that the deceased died due to respiratory and cardiac arrest cannot be accepted since they did not file any report submitted by Priman Detective Agency before the District Forum. The documents filed by the first respondent/ complainant clearly shows that the deceased died due to snake bite and that the insurance policy is valid on the date of the death of the deceased and that as per the conditions of the policy, the first respondent complainant is entitled to the insurance claim amount.

After going through the entire record, we find that the District Forum has rightly allowed the complaint and directed the petitioner/appellant Insurance Company to pay the insurance claim amount of Rs.3 lakhs together with costs of Rs.2,000/- and we do not see any reason to interfere with the said order passed by the District Forum."

Shri K.N.Mallikarjuna Rao argued that the order passed by the District Forum for payment of the insurance amount to respondent No.1 is liable to be declared nullity because an identical claim made by her had already been rejected by the Insurance Ombudsman. Learned counsel pointed out that two post-mortem reports produced before the Insurance Ombudsman disclose different causes for the death of late

Shri D. Venkateswarlu and, therefore, the theory of snake bite was rightly rejected. He submitted that respondent No.1 had fabricated the records to show that her husband had died due to snake bite and the District Forum committed a serious illegality by ordering payment of the amount in terms of the insurance policy.

Shri Mallikarjuna Rao further argued that the State Commission also committed a serious error by confirming the finding recorded by the District Forum. He criticized the dismissal of application for condonation of delay by arguing that the approach adopted by the State Commission on this issue is hyper-technical.

We have carefully considered the arguments of the learned counsel and perused the record. Before the District Forum, respondent No.1 had raised a specific plea that her husband received the snake bite and that on the same day he was admitted to Jaya Hospital, Hanamkonda. The petitioner controverted the same by asserting that the deceased was admitted in the hospital on 16.8.2001 and he did not die due to snake bite. The District Forum considered the rival cases and believed the version of respondent No.1. The District Forum also took cognizance of postmortem certificate Ex.A.10 issued by Civil Assistant Surgeon, Narsampet and held that the husband of the complainant (respondent No.1 herein) had died due to snake bite. The State Commission independently considered the matter and approved the finding recorded by the District Forum.

A careful reading of order dated 3.1.2006 shows that the District Forum, on the basis of the material such as Ex.A6 copy of FIR, Ex.A7 Inquest Report and Ex.A10 Postmortem Report, accepted the plea of the first respondent that her husband died due to snake bite. Admittedly, the death caused due to snake bite is covered by the insurance policy. Therefore, the order passed by the District Forum

cannot be termed as illegal or vitiated by an error of law. The State Commission not only dismissed the application for condonation of delay filed by the petitioner, but also approved the finding recorded by the District Forum on the cause of the death of Shri D. Venkateshwarlu.

In our opinion, the findings recorded by the two Forums are based on correct appreciation of evidence and mere possibility of our forming a different opinion cannot justify issue of a writ of certiorari for quashing the orders under challenge.

In the result, the writ petition is dismissed.

As a sequel to dismissal of writ petition, W.P.M.P.No.12443 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

C.V.NNAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 01.05.2007
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